I.   REMARKS

Claims 1-24 are currently pending in this application. Of these, claims 1-14 are under examination, and claims 15-24 stand withdrawn from consideration by way of Applicants' election under the Restriction Requirement mailed March 25, 2004. Claims 1-14 stand rejected. No amendments are requested.

II.   THE REJECTIONS

Claims 1-14 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by the web pages accessible under the IP address www.usafutures.com allegedly as of January 25, 1999 ("usafutures"). OFFICE ACTION p. 2.

Applicants respectfully request withdrawal the 35 U.S.C. § 102 rejections over usafutures.com because usafutures.com does not teach each and every element of Applicants' claims. For a reference to defeat a claim's novelty under 35 U.S.C. § 102 (*i.e.*, anticipate the claim), it must disclose each and every element of the claim. Advance Display Sys. v. Kent State Univ., 212 F.3d 1272 (Fed. Cir. 2000).

Applicants further request withdrawal this rejection because usafutures.com does not contain an enabling disclosure and is therefore not proper prior art. MPEP § 2121. In re Hoeksema, 399 F.2d 269 (CCPA 1968).

> In determining that quantum of prior art disclosure which is necessary to declare an applicant's invention "not novel" or "anticipated" within section 102, the stated test is whether a reference contains an 'enabling disclosure' . . .

In re Hoeksema, 55 C.C.P.A. 1499.

Only prior art that is enabling is sufficient to support a 35 U.S.C. § 102(b) rejection.

> It is well settled that prior art under 35 U.S.C. § 102(b) must sufficiently describe the claimed invention to have placed the public in possession of it.
>
> . . .
>
> Accordingly, even if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling.

In re Donohue, 766 F.2d 531, 533 (Fed. Cir. 1985).

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A. THE REJECTIONS OVER USAFUTURES.COM SHOULD BE WITHDRAWN BECAUSE IT DOES NOT TEACH EACH AND EVERY ELEMENT OF APPLICANTS' CLAIMS

The 35 U.S.C. § 102 rejection should be withdrawn because usafutures.com does not teach each and every element of Applicants' claims. For reference purposes, Applicants' independent claims 1 and 5 are listed in the tables below by claim element.

CLAIM 1

Claim Element	Claim Element Recitation
1 (a)	An Internet based system for facilitating commercial transactions between producers of agricultural commodities and intermediaries who purchase agricultural commodities from the producers, comprising:
1 (b)	a first computing sub-system configured to receive electronic communications from an intermediary;
1 (c)	a memory associated with the first computing sub-system wherein the memory includes information relating to: the intermediary including an agricultural commodity desired to be purchased, a quantity of the agricultural commodity desired to be purchased, and a basis price for the agricultural commodity desired to be purchased,
1 (d)	wherein the communications received from the intermediary will selectively affect the information relating to the intermediary;
1 (e)	a second computing sub-system operatively coupled to the first computing subsystem and the memory,
1 (f)	the second computing sub-system configured to selectively request data from a commodities exchange,
1 (g)	wherein the data includes a current trading price of the commodity;
1 (h)	a third computing subsystem configured to generate at least a portion of a web page specific to the intermediary based upon the information stored in the memory and the data obtained from the commodities exchange,
1 (i)	wherein the second computing subsystem can transmit the web page to a producer of an agricultural commodity,
1 (j)	wherein the web page includes the quantity of the agricultural commodity desired to be purchased by the intermediary, and a flat price for the commodity
1 (k)	wherein the third computing subsystem calculates the flat price by adding the basis provided by the intermediary from the current trading price obtained from the commodities exchange;
1 (l)	and a fourth computing sub-system operatively coupled to the first, second and third computing sub-systems,
1 (m)	the fourth computing subsystem configured to receive responses from producers indicating an ability to deliver an available quantity of the commodity to the intermediary and
1 (n)	to communicate with the commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity and
1 (o)	to generate a contract between the producer and the intermediary.

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CLAIM 5

Claim Element	Claim Element Recitation
5 (a)	A system for facilitating commercial transactions, comprising:
5 (b)	a first computing sub-system configured to receive communications from a logically external intermediary;
5 (c)	a memory associated with the first computing sub-system wherein the memory includes information relating to the intermediary,
5 (d)	wherein the communications received from the intermediary will selectively affect the information relating to the intermediary;
5 (e)	a second computing sub-system operatively coupled to the first computing subsystem and the memory,
5 (f)	the second computing sub-system configured to selectively request data from an external source and
5 (g)	further configured to generate an exchange structure specific to the intermediary based upon the information stored in the memory for the intermediary and the data obtained from the external source,
5 (h)	wherein the second computing subsystem can transmit the exchange structure to a third party;
5 (i)	a third computing sub-system operatively coupled to the first and second computing sub-systems,
5 (j)	the third computing subsystem configured to facilitate commercial transactions between the third party and the intermediary and
5 (k)	to automatically engage in a commercial transaction with a centralized exchange on behalf of the intermediary.

i.   The 102(b) Rejection Should Be Withdrawn Because Usafutures.com Does Not Teach Elements 1(k) and 5(g) of Applicants' Claims 1 and 5

The 102(b) rejection over usafutures.com should be withdrawn because it does not teach or suggest Applicants' claim elements 1(k) or 5(g), which relate to an exchange structure specific to the buyer (or intermediary) based upon the buyer's information (e.g., a basis price) and information obtained from an external source (e.g., data from a commodities exchange). See REDING PUBLISHED PATENT APPLICATION 2002/0046127 (pub. Apr. 18, 2002) at ¶ [0040], ¶ [0045] (hereinafter "REDING").

> Claim element 1(k): wherein the third computing subsystem calculates the flat price by adding the basis provided by the intermediary from the current trading price obtained from the commodities exchange

> Claim element 5(g): further configured to generate an exchange structure specific to the intermediary based upon the information stored in the memory for the intermediary and the data obtained from the external source

Because Applicants' claimed systems generate an exchange structure specific to the buyer, the buyer's bid price can be automatically and continually updated based upon current trading prices and the buyer's basis.

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An example of data from an external source is real-time pricing data obtained from a commodities exchange. See REDING at ¶ [0045]. Thus, an example of an exchange structure specific to the buyer is an offer by the buyer to purchase an agricultural commodity for a flat price, wherein the flat price is calculated by adding the commodity's current trading price (received from an external source) to the buyer's basis. See REDING at ¶ [0045].

Usafutures.com only relates to a buyer purchasing commodities. Usafutures.com says nothing regarding an exchange structure specific to a particular buyer.

In sum, usafutures.com contains absolutely no teaching or suggestion of Applicants' claim elements 1(k) and claim 5(g). Accordingly, the 35 U.S.C. 102(b) rejection over usafutures.com should be withdrawn.

> ii. The 102(b) Rejection Should Be Withdrawn With Respect to Claim 1 Because Usafutures.com Dose Not Teach Applicants' Claim Element 1(n)

The 35 U.S.C. 102 rejection over usafutures.com should be withdrawn with respect to independent claim 1 and its dependent claims because usafutures.com does not teach or suggest Applicants' fourth computing subsystem recited in claim element 1(l).

For a reference to anticipate, not only must the identical invention be disclosed in as complete detail as shown in the claim, Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989), **the elements disclosed by the reference must be arranged in such reference as recited by the claim**. In re Bond, 910 F.2d 831 (Fed. Cir. 1990).

Applicant's fourth computing subsystem —i.e., claim element 1(l)— comprises claim element 1(m) in combination with claim element 1(n).

> Claim element 1(l): and a fourth computing sub-system operatively coupled to the first, second and third computing sub-systems,
>
> Claim element 1(m): the fourth computing subsystem configured to receive responses from producers indicating an ability to deliver an available quantity of the commodity to the intermediary and
>
> Claim element 1(n): to communicate with the commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity and

Claim element 1(m) recites that the claimed system permits communication between buyers and sellers respecting an available quantity of a particular commodity. And claim

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element 1(n) recites that the claimed system communicates with a commodities exchange on behalf of the intermediary in order to attempt to obtain a futures contract for the commodity in an amount as close as possible to (within pre-set parameters), but not exceeding the available quantity. Thus, not only does the claimed invention permit on-line commodities exchange between buyers (or intermediaries) and sellers (or producers), but further seeks to execute a separate transaction on behalf of the buyer based on the available quantity of grain that the producer agrees to deliver. This is a classic hedge.

Nowhere does usafutures.com describe a system that permits a buyer and seller to exchange a commodity in combination with the architecture required to execute a separate transaction on behalf of the buyer with a commodities exchange based on the amount (i.e., the available quantity) of the commodity the buyer and seller are exchanging. As such, Applicants respectfully request the above-discussed rejection be withdrawn.

> iii. The 102(b) Rejection Should Be Withdrawn With Respect to Claim 5
> Because Usafutures.com Dose Not Teach Applicants' Claim Element 5(k)

The 35 U.S.C. 102 rejection over usafutures.com should be withdrawn with respect to independent claim 5 and its dependent claims because usafutures.com does not teach or suggest Applicants' claim element 5(k), which relates to automatically executing a transaction on behalf of the buyer with a centralized exchange, such as the Chicago Board of Trade. This is a very useful aspect of the claimed invention because such an automatic transaction can be a hedge-type transaction that is specifically tailored to offset the risk of the primary transaction.

As set forth in Applicants' Specification, automatically executing the transaction means that the system detects when the primary transaction has been completed and then executes the transaction between the buyer and the centralized exchange. See REDING at ¶ 51.

Usafutures.com does not teach or suggest automatic transactions. At best, usafutures.com gives background information relating to placing a hedge.

In sum, usafutures.com contains absolutely no teaching or suggestion of Applicants' and claim 5 element:

> Claim element 5(k): to automatically engage in a commercial
> transaction with a centralized exchange on behalf of the
> intermediary.

Accordingly, the 35 U.S.C. 102(b) rejection over usafutures.com should be withdrawn with respect to claim 5 and its dependent claims.

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B. USAFUTURES.COM CONTAINS INSUFFICIENT ENABLING DISCLOSURE, THEREFORE, THE 35 U.S.C. 102 REJECTION OVER THIS REFERENCE SHOULD BE WITHDRAWN

The 35 U.S.C. § 102(b) rejection over usafutures.com should be withdrawn because usafutures contains insufficient enabling disclosure and, therefore, is not proper prior art. Usafutures.com does not teach one of skill in the art how to make, use or practice the service or underlying system to which it seeks users to subscribe, let alone Applicants' claimed invention. Usafutures.com is essentially a mere advertisement.

A reference that does not provide enabling disclosure with respect to the invention an examiner seeks to anticipate cannot be used as prior art against the claims. In re Hoeksema, 399 F.2d 269 (CCPA 1968); In re Donohue, 766 F.2d 531, 533 (Fed. Cir. 1985).

> The mere fact that a disclosure is contained in a patent or
> application and thus 'constructively' reduced to practice, or that it
> is found in a printed publication, does not make the disclosure
> itself any more meaningful to those skilled in the art (and thus,
> ultimately, to the public). Rather, the criterion should be whether
> the disclosure is sufficient to enable one skilled in the art to reduce
> the disclosed invention to practice. In other words, the disclosure
> must be such as will give possession of the invention to the person
> of ordinary skill. Even the act of publication or the fiction of
> constructive reduction to practice will not suffice if the disclosure
> does not meet this standard.

In re Borst, 52 C.C.P.A. 1398, 1403 (C.C.P.A. 1965)

The reference usafutures.com relates to a website that, at one time provided, purported to provide an on-line service called Internet Order Express to permit subscribers to conduct on-line commodities trading. Usafutures.com begins by explaining the process of futures hedging by providing a pedagogical example of hedging soybeans. In the next section, usafutures.com presents a summary of its Internet Order Express, an Internet-based platform by which commodity traders can enter orders, receive fill prices and interact with their commodities broker by way of the Internet. There is absolutely no teaching or disclosure of how the platform operates. For example, there is no mention of any methods steps, routines, examples, apparatus, system, server, computer hardware, computer software.

In fact, the reference itself states that it does not provide enabling disclosure. The follow is a quote directly from the reference itself.

> Sounds good, where can I find out more? This trading application
> is a proprietary one available only to clients of a Vision 1B such
> as Columbia Asset Management.

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USAFUTURES.COM at p. 9 (emphasis added). Should the Examiner disagree, Applicants respectfully request his to point out enabling disclosure in usafutures.com as is his burden. MPEP § 2121.

In sum, because usafutures.com is not enabled with respect to the claims the Examiner seeks to anticipate under 35 U.S.C. § 102(b), Applicants respectfully request withdrawal of this rejection.

C. CONSIDERATION OF THE EXAMINER'S ARGUMENTS

The Office Action improperly finds non-enabled elements from within usafutures.com to reject Applicants' claims.

As discussed above, each and every claim element must be shown by the reference in order to support anticipation under 35 U.S.C. 102. Studiengesellschaft Köhle, m.b.H v. Dart Indus., Inc., 726 F.2d 724 (Fed. Cir. 1984). Furthermore, the arrangement of elements in the reference must be identical to that of the claim. C.R. Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340.

> For a prior art reference to anticipate in terms of 35 U.S.C. § 102,
> every element of the claimed invention must be identically shown
> in a single reference. . . . These elements must be arranged as in the
> claim under review . . .

In re Bond, 910 F.2d 831, 832 (Fed. Cir., 1990) (emphasis added).

And it is the Examiner's burden to present a *prima facie* case of anticipation by specifically pointing out the rational for finding each and every element of the claimed invention.

> The examiner bears the burden of presenting at least a prima facie
> case of anticipation. . . . Only if that burden is let, does the burden
> of going forward shift to the applicant.

In re Sun, 1993 U.S. App. LEXIS 34020 (Fed. Cir., 1993) (emphasis added)

The Examiner has not provided an explanation of where each and every claim element can be found in usafutures.com and has not, therefore, met his burden.

The Examiner recites that the "system has a web page and each account holder or client would have access specific to their own account". OFFICE ACTION at P. 2. The Examiner provides no support for this statement and Applicant (even though he bears no such burden) can not find support in usafutures.

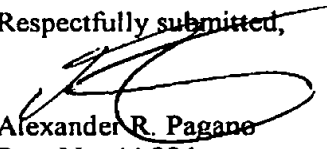The Examiner states in the office action that calculation of flat price is an inherent feature of usafutures.

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> The determination or calculation of a flat price is an inherent
> feature of agricultural price structure. A broker would be well
> aware of this old and well-known simple mathematical relation.

OFFICE ACTION at P. 2. There is absolutely no support or evidence presented by the Examiner

for this statement. And not only is this statement unsupported, but it is not the proper test for

finding an anticipating element. The test is not merely whether a particular element is well-

known in the art or inherent in the reference, anticipation is only found when the arrangement of

elements in the reference is identical to the claimed arrangement. In re Bond, 910 F.2d 831, 832

(Fed. Cir., 1990). In view of the above, Applicants respectfully request withdrawal of all

rejections over usafutures.

III.   CONCLUSION

In view of the above remarks, Applicant has overcome all rejections, and reconsideration

is requested. No fee is required for entry of this Reply. If any fee is due, however, please charge

the required fee to deposit account number **501358**.

Respectfully submitted,

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